

Sexual Assault In Juvenile Corrections: A Preventable Tragedy

By Caleb S. Asbridge

In Seattle, a former juvenile corrections officer pleads guilty to two counts of custodial sexual misconduct for sexual activities with youths housed at a King County juvenile detention center.¹ In Texas, a former Texas Youth Commission staff member is indicted on 15 counts of sexual assault on a youth under his care.² Recently, an appellate court in Hawaii upheld the 2005 conviction of a juvenile corrections officer for sexual assault against a youth in his care.³

These examples indicate that despite increased efforts to educate and train staff on the boundaries of professional conduct, as is done in all professions, there are still some correctional employees violating longstanding policy. The Bureau of Justice Statistics (BJS) for juvenile corrections estimates that there were approximately 2,821 allegations of sexual violence against youths in public or private residential facilities in 2004.⁴ This estimate may be surprising to some in juvenile corrections, which prides itself on providing safe and supportive environments for youths to be rehabilitated. The field attracts primarily staff who are caring individuals with a mission to help youths succeed, but it may also attract some staff who prey on the imbalance of power that exists between staff and youths in facilities. Another issue is the sexual assault of juveniles by other juveniles, which is less publicized but no less important than staff sexual misconduct.

Although it is often difficult to draw specific conclusions from aggregate data, one conclusion is clear: Sexual assault — both youth-on-youth and staff-on-youth — in juvenile correctional settings is a problem that cannot be ignored. Juvenile corrections administrators must be proactive in preventing and responding to incidents of sexual violence within the juvenile corrections system. The passage of the Prison Rape Elimination Act (PREA) in 2003 sends a strong message to all officials in juvenile corrections that they simply cannot turn a blind eye toward these issues.

The Law

On Sept. 4, 2003, President Bush signed Public Law 108-79, known as the Prison Rape Elimination Act, with a stated purpose that includes:

- Establishing a zero-tolerance standard for the incidence of prison rape in U.S. prisons;
- Making the prevention of prison rape a top priority in each prison system;
- Developing and implementing national standards for the detection, prevention, reduction and punishment of prison rape; and
- Increasing the accountability of prison officials who fail to detect, prevent, reduce and punish prison rape.

For juvenile corrections administrators, these purposes may seem to be skewed toward the adult prison system; the term “prison” seems to leave out all except the most severe juvenile settings, typically those reserved for youth-offenders. However, this is not the case. The law defines prison broadly and includes “any confinement facility of a federal, state or local government,” specifically including “any juvenile facility used for the custody or care of juvenile inmates.” This means that PREA applies to most, if not all, juvenile residential settings.

Although there are several provisions of the PREA legislation, this article will highlight three that are especially relevant to juvenile service providers. First, PREA provides funding for the collection of statistical data regarding the prevalence of sexual assault in facilities. This effort began with the 2004 Survey on Sexual Violence and continues through the efforts of BJS.

A second major provision of PREA is that it funds major grants for systems to address factors that contribute to the incidence of sexual assault. In addition to addressing these factors, the funds will help systems and programs come into compliance with standards, another important part of the legislation.

Third, PREA mandates the creation of the National Prison Rape Elimination Commission, which is charged with (among other things) recommending national standards that will be applicable to juvenile facilities and systems. These standards will address all aspects of sexual assault, and most likely will include reporting mechanisms, investigation of allegations, supervision schemes, medical follow-up, and policies and procedures. A separate section of the legislation mandates that any accreditation organization that receives federal funding will be required to adopt these standards.

For juvenile justice agencies and private residential service providers, this legislation and the subsequent promulgation of standards are significant. PREA will result in increased scrutiny, at both the state and federal levels, of all issues surrounding sexual assault, both staff-on-youth and youth-on-youth. The adoption of standards also will highlight systems and providers that are lacking in critical areas such as proper mechanisms for youths to report sexual assault, investigation techniques, appropriate post-assault medical procedures and appropriate youth supervision. Given the findings of the 2004 BJS survey, these areas will be under heavy scrutiny for juvenile practitioners.

Defining Sexual Assault

One issue that can complicate dealing with sexual assault is the definition of terms. The PREA legislation and subsequent publications by BJS help to provide common definitions for terms that are often applied in sexual assault cases.

PREA provides definitions for terms such as rape, oral sodomy, sexual assault with an object and sexual fondling. Further, BJS has provided definitions for nonconsensual sexual acts, abusive sexual contacts, staff sexual misconduct and sexual harassment.

Although jurisdictions are obliged only to follow these definitions when reporting to BJS, it would be prudent for

jurisdictional definitions to be aligned with these federal definitions. In addition to the legislation's definitions, state law can provide further definitions that are relevant to particular jurisdictions. It is incumbent upon agency and facility administrators to have a working knowledge of these state definitions. Agency and facility policy may also be a source of relevant definitions of terms related to sexual assault.

Issues Surrounding Assault

PREA addresses two types of sexual assault that pertain to juvenile corrections: staff sexual misconduct and youth-on-youth sexual assault. Although many national efforts have focused primarily on staff sexual misconduct, there is evidence to show that youth-on-youth assault is a problem worthy of attention. Throughout PREA, references to sexual assault refer to both types.

Youth-on-youth assault can sometimes be difficult to quantify, especially in programs that treat juvenile sex offenders. Given that adolescence is typically a time of sexual experimentation, and the fact that youths in institutional settings are often under institutional mandate to refrain from sexual activity, it can sometimes be difficult for programs to draw the line between consensual sex and assault.

It is important to note that almost all states have statutes prohibiting the sexual abuse of individuals in custody. In many of these states, the laws specifically cover youths in custody. Furthermore, many state statutes specifically rule out “consent” as a defense against liability. (Information on specific state statutes and their coverage of sexual assault is available on American University's Washington College of Law PREA Web site at www.wcl.american.edu/nic.)

Simply put, it is prudent for administrators to assume that youths, by virtue of their status as juveniles in custody, are incapable of consenting to sexual activity either with other youths or with staff. Given the difficulty of determining consent and the liability a particular institution takes on when an assault occurs, a wise course would be to investigate and treat all sexual encounters between youths as possible assaults. Administrators must be familiar with all the relevant state statutes that relate to sexual assault.

Liability

Although PREA provides no new cause of legal action against juvenile facilities or jurisdictions, it does help to strengthen the protections provided to incarcerated individuals (whether adult or juvenile) under the Eighth Amendment, which prohibits cruel and unusual punishment. This was cited in a ruling by the U.S. Supreme Court (*Farmer v. Brennan*) to include the prevention of the assault of incarcerated individuals. According to this ruling, institutions and jurisdictions have a responsibility to protect those under their care from serious harm, particularly sexual assault. Those not providing these protections can be held liable for “deliberate indifference” to the injuries that occur from assault. The passage of PREA

reaffirms the responsibility of administrators and jurisdictions in protecting those under their care, and the educational efforts surrounding PREA make it more difficult to use ignorance of the law as a defense.

In addition to federal claims, there are other types of legal claims that can result from the occurrence of sexual assault. Official liability can occur when administrators fail to:

- Act on allegations of sexual assault;
- Adequately supervise employees to make sure assaults are not occurring;
- Train employees on how to prevent sexual assault; or
- Take appropriate disciplinary action or file legal charges against employees who are found to have committed sexual misconduct.

Currently the highest profile case involving official liability involves the former superintendent of the Marion County Juvenile Detention Center in Indianapolis, who is accused of mishandling reports of sexual abuse that were brought to his attention from within the facility.

Although many issues of liability remain somewhat murky, the bottom line is that practitioners and administrators within the juvenile corrections system are responsible for providing a safe environment for juveniles to receive treatment and sanctions for their crimes against society. It is clear that being victimized by sexual assault is not a part of the sanction that society imposes for violation of the law.

Organizational Culture

A frequently overlooked but important factor in preventing sexual assault in juvenile corrections is the overall culture of the organization — particularly, the culture that is prevalent in individual institutions and/or field offices. Often, an insular and closed-staff culture can be the reason for unreported or underreported sexual misconduct. In these environments, front-line staff may be hesitant to report allegations of misconduct out of fear of reprisal or because they are reliant on the alleged perpetrator to “get their back” if a violent situation occurs. Also, administrators may either censor or suppress reports in order to handle situations in a more informal manner.

One example of how agency culture can provide an environment conducive to assault is that of the West Texas State School, operated by the Texas Youth Commission. In an investigation that led to the complete reform of the agency, it was noted that: “The West Texas State School campus was insular and isolated. Allegations and suspicions of misconduct were not reported or when reported were screened. Those who made reports without solid evidence were indirectly rebuked.”⁵

Strategy for Addressing Assault

For administrators, now is the time to address this issue. In order to ensure that sexual assault is eliminated in a jurisdiction or institution, administrators should commit to an internal audit that includes the following actions.

Examine existing mechanisms for youths to report sexual assault by staff or other youths. Some questions to ask are: Do multiple methods exist for youths to report sexual assault? If so, are these mechanisms fully explained to youths and is their understanding documented? Is full access to outside investigative bodies that are independent of the agency provided?

Talk frequently with staff and youths under their care. Too often, there is a code of silence that surrounds issues of sexual assault. From the staff side, this often arises from a desire to protect accused staff. From the youth side, this often arises due to a lack of genuine belief that the situation can be changed. Truly engaged administrators who simply ask questions and follow up on answers can go a long way in breaking the code of silence.

Critically evaluate existing procedures for investigating juvenile complaints. Some questions to ask include: Are there procedures for isolating crime scenes where a potential assault occurred? Do first-line supervisors know how to gather and preserve evidence and what authorities to contact after a report of sexual assault? Is the agency’s or institution’s investigative body/unit properly trained in conducting interviews of suspects and victims? Does the agency operate in the appropriate regulatory framework to conduct thorough investigations, and if not, does the agency have a policy in place for turning over investigations to the appropriate law enforcement agency?

Ensure that there are procedures in place to provide the appropriate medical care for victims of sexual assault. Do line staff and first-line supervisory staff know what to do when confronted with a sexual assault victim? Are there appropriate medical facilities either on-site or nearby to provide post-assault medical care and collect forensic evidence? Does the facility/agency have memoranda of understanding with appropriate medical service providers?

Assess the supervision schemes used at the facility/facilities. Do institutional staff rely heavily on secondary supervision (e.g., camera or security booth) of the youths rather than primary supervision (e.g., staff present with fewer than 20 juveniles)? Are staff trained in proper techniques of supervising and managing juveniles? Do institutions/field offices allow for single staff-youth or single youth-youth interaction in private areas without other staff or youths around? Are there significant “blind areas” in an institution that could be exploited by predators (both staff and juvenile)?

Ensure a strong network of policies and procedures built around best practices. Does the agency have a clear code of ethics/conduct for staff? Are staff trained in such areas as sexual harassment, mandatory reporting of abuse/neglect and the limitations of personal boundaries? Does the agency have a solid nonfraternization policy?

Although these are not all the areas that need scrutiny, this assessment certainly will provide an agency or institution with a starting point for addressing weaknesses. Administrators must then develop an action plan for addressing areas of deficiency and a timeline for completion.

Agency administrators should become familiar with resources that are currently available for assistance. The National Institute of Corrections is charged with providing technical assistance for agencies in preparing for PREA

standards. Technical assistance can be requested through NIC by contacting Dee Halley, program manager, at 1-800-995-6423, ext. 40374, or dhalley@bop.gov. There also is a wealth of information available at NIC's Web site (www.ncic.org/prea) and the American University Washington College of Law site (www.wcl.american.edu/nic).

The issue of sexual assault of juveniles in institutional settings is a major issue that simply cannot be ignored. PREA will continue to be used at the federal level to shed light on this important issue and to push agencies toward a zero-tolerance goal. Every person who works in the field of juvenile corrections has a duty to provide the youths in his or her care with a safe, healthy environment that is free from victimization. With a strong national effort and individual agency and institutional leadership, it will be possible to eliminate sexual assault within juvenile correctional settings.

ENDNOTE

¹ Clarridge, C. 2007. Ex-officer admits she had sex with teens at detention hall. *The Seattle Times*, 7 June. Retrieved July 7, 2007, from <http://archives.seattletimes.nwsource.com/cgi-bin/texis.cgi/web/vortex/display?slug=webjailguard07m&date=20070607&query=corrections>.

² Sandberg, L. 2007. Ex-TYC guard charged with sexual assault of S.A. girl. *The San Antonio Express-News*, 10 May. Retrieved July 5, 2007, from www.mysanantonio.com/news/metro/stories/MYSA051007.youthcommission.e-n.574d0b62.html.

³ Juvenile Justice Update. 2007. Court upholds conviction of youth correctional officer for sexual assault of ward. *Juvenile Justice Update*, 13(1): 5. (February/March).

⁴ Beck, A.J. and T.A. Hughes. 2005. *Sexual violence reported by correctional authorities*, 2004. Washington, D.C.: U.S. Department of Justice.

⁵ Texas Youth Commission. 2007. *Summary report for administrative review: West Texas State School*. Retrieved July 10, 2007, from www.youthtoday.org/youthtoday/newslinks.html.

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